

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

**EAST ALTAMONT ENERGY
CENTER****EAST ALTAMONT ENERGY
CENTER, LLC**) Docket No. 01-AFC-4C
)
)) **Order No. 08-0813-8**) **ORDER APPROVING** Extension of the) Deadline for Commencement of Construction
)

DOCKET	
01-AFC-4C	
DATE	AUG 13 2008
RECD.	AUG 15 2008

INTRODUCTION

On May 16, 2008, East Altamont Energy Center, LLC, filed a petition to extend the deadline for the commencement of construction of the East Altamont Energy Center, located in the unincorporated portion of eastern Alameda County, California. Petitioner requests an extension of three years, from August 19, 2008 to August 19, 2011. The deadline, set by regulation, is otherwise five years from the effective date of the Energy Commission's decision, but an applicant, before the deadline, may request and the Commission may order an extension for good cause. (Cal. Code Regs., tit. 20, § 1720.3.)

This matter was heard at the regularly scheduled Business Meeting held on August 13, 2008, at which time staff and petitioner addressed the Commission. The Commission also received several public comments.

DISCUSSION

Petitioner requests a three-year extension of the deadline, to August 19, 2011, for commencing construction of the East Altamont Energy Center. According to petitioner, the extension would allow it to continue to market its facility and compete in PG&E's 2008 solicitation for new capacity (800-1200 MW) and, if successful, file a timely petition to modify the project as needed by the power purchase agreement. According to petitioner, a power purchase agreement is a prerequisite for it to commence construction of the project.

Staff has no objections to extending the deadline, but notes the need to address issues prior to the start of construction in the areas of air quality, hazardous materials management, soil and water, and transmission system engineering. In an analysis filed June 23, 2008, mailed to interested persons, and posted on the Commission's website, staff identified the subject areas that will require analysis and resolution of issues resulting from updated information as required by

conditions of certification. Those areas are air quality, soil and water, and transmission system engineering. With respect to hazardous materials management, to the extent substantially changed circumstances have occurred in the level and direction of growth in the vicinity of the project, staff recommends that reassessment of the potential hazard of using anhydrous ammonia for the project should be required. Provided these matters are addressed in timely fashion prior to the start of construction, staff recommends approval of petitioners request based on the reasons set forth in the petition. Further discussion of the technical issues in staff's June 23, 2008 analysis is provided below.

ISSUES TO BE ADDRESSED RELATED TO COMMENCEMENT OF CONSTRUCTION

Staff concludes that issues in four technical areas will need to be resolved prior to commencing construction. The technical issues raised by staff are in air quality, hazardous materials management, soil and water, and transmission system engineering. Public comments received raise similar, if not identical, issues. Petitioner did not dispute or take issue with the issues or recommendations in staff's June 23, 2008 analysis.

According to the staff's analysis, conditions of certification will need to be modified, if not added, to address changed circumstances and changes in applicable laws, ordinances, rules, or standards. For example, the permit conditions under the Bay Area Air Quality Management District's rules have expired due to construction not having yet commenced after almost five years since certification. Because emissions standards have changed in the meantime, the project is now subject to new standards that will have to be reflected in new conditions of certification. Other matters discussed in staff's analysis and raised in public comments are also likely to be the subject of revised, if not new, conditions if the project is to be constructed and operated in a manner protective of the environment and public health and safety and in accordance with applicable laws. The granting of the Petition to Extend the Deadline to Commence Construction would allow time for the project owner to file a petition to modify the project, where required, pursuant to Title 20, California Code of Regulations, section 1769, to resolve these issues. Following is a summary of the issues:

Air Quality

- The project is subject to new emissions standards that have taken effect under the Bay Area and San Joaquin Valley air districts' rules since the project received certification. These new standards will need to be reflected in modified or new conditions of certification as recommended by the air districts.
- Mitigation fees to be paid to the San Joaquin Valley Unified Air Pollution Control District (SJUAPCD) will need to be renegotiated as the costs to fund control measures to reduce existing NOx emissions have increased significantly since 2003. A copy of the newly signed agreement shall be sent to the CPM before construction may begin.

- The project owner will have to provide to the CPM for approval analyses and mitigation for the project's NO₂ emissions and impacts, and PM10/PM2.5 direct and secondary emissions impacts, prior to commencement of construction.

Hazardous Materials

During the original siting case the proposed community of Mountain House was included in the hazardous materials management analysis. If additional growth has substantially changed the proximity of the project to the public, the staff would re-evaluate the potential for impacts associated with the Decision's conditions of certification regarding anhydrous ammonia use. If necessary, staff would propose additional mitigations and/or conditions of certification to protect public health.

Soil and Water

- Condition of Certification **Soil and Water-5** indicates the owner may only be required to use recycled water if it is comparable to or less than the cost of surface water. Therefore, the cost of recycled water and when it shall be used for plant operation must be analyzed, and new conditions of certification may result.
- The project owner will also need to provide to the CPM a technical memorandum describing the current availability and reliability of recycled water, potential competing needs, and a current will-serve letter confirming and committing to the future delivery of recycled water.

Transmission System Engineering

- The Detailed Interconnection Facility Study may not be valid for the new construction and operation date. Condition of Certification **TSE-1.8**, from the Commission's Decision, requires the project owner to submit any new or updated studies as well as provide a description of required facility upgrades or operating procedures identified in the studies.

CONCLUSION AND ORDER

The main issue under the applicable regulation here is whether petitioner has shown good cause for the requested extension. (Cal. Code Regs., tit. 20, § 1720.3.) Petitioner's request for a three-year extension of the deadline to commence construction rests on statements that it wishes to continue to market its project, participate in a utility solicitation, and compete for a power purchase agreement. Absent a power purchase agreement, petitioner states it would not commence construction. Staff does not dispute petitioner's claims or object to the extension, but, at the same time, it and members of the public have raised concerns about the need to analyze changed circumstances and the applicability of new requirements on the project should it be built and operated. Staff identified in its June 23, 2008 analysis that one or more technical areas raise issues that would result in new or modified conditions of certification. Petitioner does not dispute the issues or the possible need for new or modified conditions of certification that must be decided before construction begins.

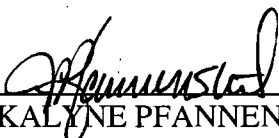
Based on the reasons provided in the petition, the Commission finds that good cause for a three-year extension has been shown. Because of the issues raised, however, by staff's analysis and public comments, we approve the deadline extension not only for the purpose of allowing petitioner to market the project and seek a power purchase agreement, but also for the project owner to file a petition for modification in accordance with the Commission's regulations. The petition would be to modify conditions of certification as needed by project changes or changes in applicable laws, ordinances, rules, or standards. (See Cal. Code Regs., tit. 20, § 1769, regarding post certification modifications.) Such petition for modification and its processing by the Commission shall be a prerequisite for construction of the project to begin.

Good cause having been shown by petitioner, the California Energy Commission hereby adopts staff's recommendations and approves the three-year extension, from August 19, 2008 to August 19, 2011, of the deadline for commencement of construction for the East Altamont Energy Center Project Decision, with the following qualification. The extension shall be for the limited purpose to allow petitioner to market the project and compete in solicitations for new capacity and, in any event, for the project owner to file a timely petition for modification to address the issues identified in staff's analysis and other issues as may arise depending on the circumstances at the time petitioner has successfully marketed the project or entered into a power purchase agreement. A timely petition shall be one that is filed in sufficient time to allow for analysis and decision prior to the commencement of construction.

IT IS SO ORDERED.

Date: August 13, 2008

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION



JACKALYNE PFANNENSTIEL
Chairman.